

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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THERESA THOMAS,

Case No. 15-cv-1428-pp

Plaintiff,

v.

CAROLYN W. COLVIN,  
Assistant Commissioner of the Social Security  
Administration,

Defendant.

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**ORDER GRANTING IN PART  
REQUEST TO PROCEED *IN FORMA PAUPERIS* (DKT. NO. 2)**

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On December 1, 2015, the plaintiff filed a request that the court review the denial of her Social Security Supplemental Security Income and Disability Insurance claims. Dkt. No. 1. Along with the complaint, the plaintiff filed an affidavit in support of her motion that the court allow her to proceed with the case without paying the filing fee. Dkt. No. 2. In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

In the affidavit, the plaintiff indicates that she is married and has a minor daughter, but she does not provide her daughter with any monetary support. She indicates that she is not employed, and has no income. *Id.* at 1. Her husband is employed, and his total gross monthly wages are \$3,152, and his net income is \$2,891.30. *Id.* at 2. She owns one vehicle that she values

between at \$3,000. Id. at 3. She and her husband own a home, valued at \$185,000, but she states that they have no equity in the home. She has a nominal balance in her bank account. Id.

As for expenses, the plaintiff lists a mortgage payment of \$853 per month. She has monthly expenses of \$800 for groceries, \$212 for utilities, about \$243 for car payments, \$245 for car insurance, \$200 for gas and \$100 for medicine. Id.at 2.

Thus, the plaintiff's household has a net income of \$2,891.30 per month, minimal additional assets, and expenses of \$2,715 per month. The court concludes from this information that the plaintiff has demonstrated that she cannot pay the full amount of the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993).

A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

In her complaint, the plaintiff asserts that the ALJ's credibility finding is not supported by substantial evidence, that he failed to properly evaluate the plaintiff's medical condition and symptoms, that he failed to evaluate the

combined effects of her severe and non-severe impairments, that he made an erroneous RFC determination, and that he failed to follow a number of the Commissioner's own rulings. Dkt. No. 1 at 1-3.

Based on the allegations of the complaint, the court finds that the complaint does state a claim that the Commissioner's decision regarding the denial of her application for benefits is not supported by substantial evidence, or is contrary to law. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **ORDERS** that the plaintiff's motion for leave to appeal *in forma pauperis* (Dkt. No. 2) is **GRANTED IN PART**, to the extent that the court will allow her to proceed *in forma pauperis* upon payment of a filing fee of **\$100** to the district court clerk; the court will **WAIVE** the remainder of the \$350 filing fee and \$50 administrative fee. The court **ORDERS** the plaintiff to pay the \$100 filing fee to the clerk of the district court on or before **March 1, 2016**.

Dated in Milwaukee, Wisconsin this 6th day of January, 2016.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**United States District Judge**